IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.776 of 1980
WITH
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FIRST APPEAL No.778 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INUSRANCE CO LTD

Versus

BAI SANKLI, WD/O DECD HEMA KUKA

Appearance:
MR PV NANAVATI for MR MI PATEL for Appellant No. 1
NOTICE SERVED for Respondent No. 1-5
RULE SERVED for Respondent No. 6-7

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 09/10/2002

COMMON JUDGEMENT

1. These three appeals by the appellant - Insurance Co. under Section 110-A of the Motor Vehicles Act, 1939

arise out of the judgement and award dated 30.01.1980 passed by the Motor Accidents Claims Tribunal, Panchmahals, Godhra in M.A.C.P. No.297 of 1979, M.A.C.P. No.298 of 1979 and M.A.C.P. No.316 of 1979.

2. According to the claimants, they were travelling in the truck as labourers of the owner and Mukadam Hema Kuka was also with them. When the truck reached near village Dokhali on Sanjoi-Baria Road, the driver lost control over the truck. The truck went off the road and fell into a ditch. The labourers suffered injuries and Mukadam Hema Kuka was killed in the accident. The injured labourers filed M.A.C.P. No.297 and 298 of 1979 while M.A.C.P. No.316 of 1979 was filed by the widow and children of deceased Hema Kuka.

3. The owner and the driver filed joint written statement. They contended that the driver of the truck tried to take the truck on one side from the main road as some cattle were coming from the opposite direction. At that time, the front side of the main road had broken and hence, the truck went off the road and fell into a ditch. They also contended that the driver of the truck tried to apply the brake, but it did not work as the vacuum pipe was also broken. Thus, they pleaded an inevitable accident. The Insurance Company raised the additional plea that the claimants were travelling as gratuitous passengers and, therefore, they were unauthorized passengers.

4. After recording evidence led by the parties, the Tribunal found that there was a clear and consistent evidence of all the claimants that they were travelling as labourers and not gratuitous passengers as contended by the Insurance Company. The Tribunal, therefore, held that Insurance Company was liable to pay compensation. The Tribunal awarded Rs.53,000/= to the claimants in M.A.C.P. No.297 of 1979, Rs.14,800/= to the claimant in M.A.C.P. No.298 of 1979 and Rs.9,999/= to the claimant in M.A.C.P. No.316 of 1979. The Tribunal also awarded 6% interest from the date of application till realization.

5. The Insurance Company has, therefore, filed these three appeals challenging the said award.

6. At the request of the Court, Shri P.V.Nanavati, who usually appears for the appellant - Insurance Company in other matters, appeared for the appellant in the present appeal. He has taken me through the judgement of the Tribunal and contended that the Tribunal erred in

holding that the claimants and deceased Hema Kuka were not travelling as gratuitous passengers but they were travelling as labourers. However, the Tribunal has rightly observed that there was clear and consistent evidence of all the claimants that they were travelling as labourers of the owner at the relevant time. This fact was also admitted by Opponent Nos.1 and 2. There was no rebuttal evidence led by the opponents. The Tribunal was, therefore, justified in holding that the claimants were travelling as labourers of the owner and not as gratuitous passengers. The Insurance Company was, therefore, liable to satisfy the award. This is the only contention raised on behalf of the appellant but there is no substance in the same.

7. The appeals, therefore, fail and are dismissed with no order as to costs. Sd/-

[M.C.PATEL,J]

'Bhavesh'